



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

SEP 26 2003

CERTIFIED MAIL: RETURN RECEIPT REQUESTED ( 7001 0360 0003 6672 5125)

Mr. Perry Covey  
Vice President  
J. E. Dunn of Texas, Inc.  
3000 Richmond, Suite 200  
Houston, Texas 77098

RE: Expedited Storm Water Settlement Agreement - Consent Agreement and Final Order  
Docket No. CWA-06-2003-1978  
NPDES Permit No. TXU010258

Dear Mr. Covey:

This is to acknowledge receipt of the Expedited Storm Water Settlement Agreement that you signed. As no comments were received from the general public during the thirty (30) day public notice period, the Environmental Protection Agency hereby issues this Final Consent Agreement and Final Order.

The Consent Agreement and Final Order shall become effective thirty (30) days after the date of filing with the Hearing Clerk.

If you have any questions regarding this matter, please contact Ms. Thea Lomax at telephone (214) 665- 8098.

Sincerely yours,

David W. Neleigh  
Acting Chief  
Water Enforcement Branch

Enclosure(s)

cc: Mr. John Sadlier  
TCEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 6, P.O. Box 50625, Dallas, TX 75250-0625  
**EXPEDITED STORM WATER SETTLEMENT AGREEMENT**  
Docket Number: CWA-06- 2003 - 1978 , NPDES No. TXU010258

SEP 20 11:55

REGIONAL HEARING CLERK  
EPA REGION VI

J. E. Dunn Construction OF TEXAS, INC

(herein the "Respondent") is a "person," within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

Attached is an "Expedited Settlement Offer Worksheet" (herein the "Form"), which is hereby incorporated by reference. By its signature, EPA finds that Respondent has committed the violations set forth in the Form.

Respondent had an unauthorized discharge of storm water in violation of Section 301(a) of the Clean Water Act ("the Act" or "CWA"), 33 U.S.C. § 1311 and/or failed to comply with its National Pollutant Discharge Elimination System (NPDES) storm water permit authorized under Section 402 of the Act, 33 U.S.C. § 1342, as noted on the attached Form.

EPA finds, and Respondent admits, that Respondent is subject to Section 301(a) of the Act, 33 U.S.C. § 1311, and that EPA has jurisdiction over the allegations. Respondent specifically admits, within the meaning of the Act, to being a "person" who "discharged pollutants" from a "point source" to a "navigable water." Respondent neither admits nor denies the allegation(s) specified in the Form.

EPA is authorized to enter into this Consent Agreement and Final Order ("CAFO") under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 CFR § 22.13(b). The parties enter into this CAFO in order to settle the civil violations specified in the Form for a penalty of \$ 500.00. Respondent consents to the assessment of this penalty, and waives the right to contest the allegation(s) specified in the Form, and waives the right to appeal.

Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that it has corrected any deficiencies identified in the Form, and to the best of its knowledge, is in compliance with the NPDES permitting program. Respondent also certifies that it has sent a certified check for the amount specified above, payable to the "Treasurer, United States of America" to:

Regional Hearing Clerk  
U.S. EPA, Region 6  
Docket No.: CWA-06-2003-1978  
P.O. Box 360582M  
Pittsburgh, PA 15251

and has written on the penalty payment check the docket number of this case. This CAFO, along with a photocopy of your check, is to be returned to the address at the top of this document.

This CAFO settles EPA's civil penalty claims against Respondent for the CWA violation[s] described in the Form. However, EPA does not waive its rights to take any enforcement action against Respondent for any other past present, or future civil or criminal violation of the Clean Water Act or of any other federal statute or regulation, and does not waive its right to issue a compliance order for the violation[s] described in the Form. EPA has provided opportunity for public comment and reviewed any public comments received pursuant to the Act and 40 CFR Part 22, and has determined this CAFO to be in the public interest, and Respondent agrees.

This CAFO is binding on the parties signing below, and effective upon filing with the Regional Hearing Clerk. If Respondent does not sign and return this CAFO as presented within 30 days of the date of its receipt, the proposed CAFO is withdrawn without prejudice to EPA's ability to issue any order or file any enforcement action for the violations identified in the Form.

APPROVED BY EPA:

David W. Neleigh Date: Sept 19, 2003

Mr. ~~Michael Michaud~~ David W. Neleigh  
Branch Chief, Water Enforcement Branch

APPROVED BY RESPONDENT in accordance with 40 CFR 122.22:

Name (print): PERRY COVEY

Title (print): SR VP

Signature: [Signature]

Having determined that this CAFO is authorized by law and is in the public interest,

IT IS SO ORDERED:

[Signature] Date 9/24/03  
Richard E. Greene  
Regional Administrator

ORE.2/26/03 - modified by Region 6 on 5/8/2003, modified again on 5/19/2003

JUN 25 2003

AO Docket No. CWA-06-2003-1962  
Penalty Order Docket No. CWA-06-2003-1978

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_\_ day of SEP 26 2003, 2003, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U. S. EPA, Region 6 (6RC-HO), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States Mail, by certified mail, return receipt requested, addressed to the following:

Mr. Perry Covey  
Vice President  
J. E. Dunn of Texas, Inc.  
3000 Richmond, Suite 200  
Houston, Texas 77098

SEP 26 2003, A. Smith

## Expedited Settlement Offer Worksheet

*Consult attached instructions regarding eligibility criteria  
and procedures prior to use*

### 1 Legal name and Mailing Address

J. E. Dunn Construction  
3000 Richmond, Suite 200  
Houston, Texas 77098

Telephone No.: 713-521-4664

NPDES Permit No.  
TXU01258

### 2 Legal Description of How Organized (e.g., Delaware corporation, Texas municipality)

Texas corporation

### 3 Name and Location of the Facility

Conroe Integrated Medial Plaza  
1501 River Pointe  
Conroe, Texas

#### Inspection Date:

Name of Authorized Official (40 CFR 122.22):

22-Jan-03

Start Construction Date:

Perry Covey, Vice President

Estimated Completion Construction Date:

Not applicable

Name of Receiving Water Body:

Not applicable

If Unpermitted, dates not permitted:

Great Lake Creek

Acres Disturbed (whole common plan)

22-Jan-03

Rainfall Erosivity Factor

Not applicable

Does facility meet TMDL exemption? 40 CFR 122.26(b)(15)

Not applicable

Citation

Reference

No. of

Violations

Violation Amount

Settlement Offer

3 Operator(s) in control of site specifications unpermitted for \_\_\_\_\_ months

CWA 301

1

\$500.00

\$500.00

4 Operator(s) in control of day-to-day activities unpermitted for \_\_\_\_\_ months

CWA 301

0

\$500.00

\$0.00

5 SWPPP not prepared (If no SWPPP, leave elements 6 - 31 blank)

CGP 3.1.A

0

\$4,000.00

\$0.00

6 SWPPP not complete before NOI submitted

CGP 3.1.A

0

\$500.00

\$0.00

7 SWPPP does not identify all potential sources of pollution to include: porta-pottys, fuel tanks, staging areas, waste containers, chemical storage areas, concrete cure, paints, solvents, etc...

CGP 3.1.B

0

\$250.00

\$0.00

8 SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control

CGP 3.3.A

0

\$500.00

\$0.00

9 SWPPP does not have site description, as follows:

CGP 3.3.B

A Nature of activity in description

CGP 3.3.B.1

0

\$100.00

\$0.00

B Intended sequence of major activities

CGP 3.3.B.2

0

\$100.00

\$0.00

C Total disturbed acreage

CGP 3.3.B.3

0

\$100.00

\$0.00

D General location map

CGP 3.3.B.4

0

\$100.00

\$0.00

E Site map

CGP 3.3.C

0

\$500.00

\$0.00

F Site map does not show drainage patterns, slopes, areas of disturbance, locations of major controls, structural practices shown, stabilization practices, offsite materials, waste, borrow or equipment storage areas, surface waters, discharge points, areas of final stabilization (count each omission under 9F as 1 violation)

CGP 3.3.C 1 - 8

0

\$50.00

\$0.00

G No name and/or description of receiving water

CGP 3.3.D

0

\$250.00

\$0.00

H. Location/description industrial activities, like concrete or asphalt batch plants

CGP 3.3.E

0

\$500.00

\$0.00

### 10 SWPPP does not:

A Describe all pollution control measures

CGP 3.4.A

0

\$750.00

\$0.00

B Describe sequence for implementation

CGP 3.4.A

0

\$250.00

\$0.00

C Detail operator(s) responsible for implementation

CGP 3.4.A

0

\$250.00

\$0.00

### 11 SWPPP does not describe interim stabilization practices

CGP 3.4.B

0

\$250.00

\$0.00

### 12 SWPPP does not describe permanent stabilization practices

CGP 3.4.B

0

\$250.00

\$0.00

### 13 SWPPP does not describe a schedule to implement stabilization

CGP 3.4.B

0

\$250.00

\$0.00



	practices				
14	Following dates are not recorded: major grading activities, construction temporarily or permanently ceased; stabilization measures initiated (count each omission under 14 as 1 violation)	CGP 3.4.C.1-3	0	\$250.00	\$0.00
15	SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas	CGP 3.4.D	0	\$500.00	\$0.00
16	SWPPP does not have a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur AFTER construction operations have been completed	CGP 3.4.E	0	\$500.00	\$0.00
17	SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit	CGP 3.4.F	0	\$500.00	\$0.00
18	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust	CGP 3.4.G	0	\$500.00	\$0.00
19	SWPPP does not include description of construction or waste materials expected to be stored on site w/updates re: controls used to reduce pollutants from these materials	CGP 3.4.H	0	\$250.00	\$0.00
20	SWPPP does not have description of pollutant sources from areas other than construction (asphalt or concrete plants) w/ updates re: controls to reduce pollutants from these materials	CGP 3.4.I	0	\$500.00	\$0.00
21	SWPPP does not identify allowable sources or non-storm water discharges listed in subpart 1.3.B of the CGP	CGP 3.5	0	\$500.00	\$0.00
22	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges	CGP 3.5	0	\$500.00	\$0.00
23	Endangered Species Act documentation is not in SWPPP A Is not signed/certified by authorized person	CGP 3.7	0	\$500.00	\$0.00
24	Historic Properties documentation is not in SWPPP A Is not signed/certified by authorized person	CGP 3.8	0	\$250.00	\$0.00
25	Copy of permit language is not in SWPPP	CGP 3.9	0	\$500.00	\$0.00
26	SWPPP is not consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management plans or site permits approved by State, Tribal or local officials (e.g., MS4 requirements)	CGP 3.10	0	\$250.00	\$0.00
27	SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans	CGP 3.10	0	\$750.00	\$0.00
28	Copies of inspection reports/all other documentation has not been retained as part of the SWPPP for 3 years from date permit coverage expires	CGP 3.11	0	\$500.00	\$0.00
29	SWPPP has not been revised to include additional or modified BMPs to correct problems identified within 7 days following an inspection	CGP 3.12.C	0	\$50.00	\$0.00
30	Permittee did not make SWPPP available for review	CGP 3.13.C	0	\$500.00	\$0.00
31	SWPPP was not signed/certified	CGP 8.11.B	0	\$500.00	\$0.00
32	Inspections not performed either once every 7 days, or once every 14 days and within 24 hours after storm event greater than 0.5 inches or greater (not required if: temp stabilization; runoff unlikely due to winter conditions; construction during arid periods in arid areas)	CGP 3.11.A.1-2, CGP 3.11.B.1-3	0	\$75.00	\$0.00
33	Inspections not conducted by qualified personnel	CGP 3.11.D	0	\$500.00	\$0.00
34	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected	CGP 3.11.E.	0	\$50.00	\$0.00
35	All pollution control measures not inspected to ensure proper operation	CGP 3.11.E.	0	\$500.00	\$0.00
36	Discharge locations are not observed and inspected	CGP 3.11.E.	0	\$50.00	\$0.00
37	For discharge locations that are not accessible, nearby locations are not inspected	CGP 3.11.E.	0	\$50.00	\$0.00
38	Entrance/exit not inspected for off-site tracking	CGP 3.11.E.	0	\$500.00	\$0.00
39	Site inspection report does not include: date, name and qualifications of inspector, weather information, location of sediment/pollutant discharge, BMP(s) requiring maintenance, BMP(s) that have failed, BMP(s) that are needed; corrective action required including changes/updates to SWPPP and schedule/dates (count each omission under 39 as 1 violation)	CGP 3.11.G.1-8	0	\$50.00	\$0.00

40	Inspection reports not properly certified per 8.11 of the permit	CGP 3.11, CGP 8.11	0	\$50.00	\$0.00
41	Sign/notice not posted conspicuously near main entrance	CGP 3.13.B	0	\$250.00	\$0.00
	A Does not contain copy of complete NOI	CGP 3.13.B.1	0	\$50.00	\$0.00
	B Where SWPPP information re: location, or contact person for scheduling viewing times has changed (e.g. differs from NOI), sign does not provide updated information	CGP 3.13.B.2	0	\$50.00	\$0.00
42	Control measures are not designed to retain sediment on site	CGP 3.14.A	0	\$500.00	\$0.00
43	Control measures are not properly:				
	A Selected	CGP 3.14.B	0	\$500.00	\$0.00
	B Installed	CGP 3.14.B	0	\$500.00	\$0.00
	C Maintained	CGP 3.14.B	0	\$500.00	\$0.00
	1. Maintenance not performed prior to next anticipated storm event	CGP 3.6.A	0	\$250.00	\$0.00
	2. Sediment not removed from traps/ponds when design capacity reduced by 50% or more		0	\$500.00	\$0.00
	(count each failure of operator to properly select, install, or maintain each BMP as 1 violation)				
44	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts	CGP 3.14.C	0	\$500.00	\$0.00
45	Litter, construction debris, and construction chemicals exposed to storm water are not prevented from becoming a pollutant source (e.g. screening outfalls, pickup daily, etc.)	CGP 3.14.D	0	\$500.00	\$0.00
46	Stabilization measures are not initiated as soon as practicable on portions of the site where construction activities have temporarily or permanently ceased within 14 days after such cessation	CGP 3.14.E	0	\$500.00	\$0.00
	*Exceptions:				
	(a) Snow or frozen ground conditions	CGP 3.14.E.1			
	(b) Activities will be resumed within 14 days	CGP 3.14.E.2			
	(c) Arid or Semi-arid areas (<20 inches per year)	CGP 3.14.E.3			
47	Common Drainage of 10+ acres does not have a sedimentation basin for the 2 year, 24 hour storm, or 3600 cubic ft. storage per acre drained	CGP 3.14.F.1	0	\$1,000.00	\$0.00
48	Common Drainage less than 10 acres does not have sediment traps, silt fences, vegetative buffer strips, or equivalent sediment controls for all down slope boundaries (not required if sedimentation sediment basin meeting criteria in 47 above)	CGP 3.14.F.3	0	\$500.00	\$0.00
				Total Expedited Settlement:	\$500.00

